



DAIL EIREANN

SELECT COMMITTEE ON ENTERPRISE AND ECONOMIC STRATEGY

INTERIM REPORT ON THE GLACKIN REPORT

(Pn 0205)

CONTENTS

	Page
1. INTRODUCTION	1
2. REFERRAL BY DAIL	1
3. INADEQUACY OF COMMITTEE'S TERMS OF REFERENCE.....	1
4. OVERLAP WITH OTHER OIREACHTAS COMMITTEES.....	2
5. ISSUES FOR CONSIDERATION	3
6. WRITTEN SUBMISSIONS	4
8. PROCEDURAL OPTIONS	7
9. CONCLUSION	8

Appendices

1. Terms of Reference of the Select Committee	10
2. Membership of the Select Committee	13
3. Copies of correspondence	14
4. Section 14, Companies Act, 1990	35
5. Section 19, Companies Act, 1993	36
6. Section 2, Committees of the Houses of the Oireachtas (Privilege and Procedure) Act, 1976	38
Proceedings of the Select Committee 20 October, 1993	39

INTRODUCTION

1. The Select Committee on Enterprise and Economic Strategy was established by Order of Dáil Eireann of 7 April 1993. The Committee's Terms of Reference and membership are included in Appendices 1 and 2.
2. The Select Committee reports progress in the matters referred to it and has agreed the following interim report.

REFERRAL BY DÁIL

3. The Report of the Inspector appointed under section 14(1) of the Companies Act, 1990 to investigate the membership of Chestvale Properties Limited and Hoddle Investments Limited (hereinafter referred to as the Glackin Report) was referred to the Select Committee by Dáil Eireann on 9 July, 1993 in accordance with paragraph 1(iv) of its Order of Reference empowering it to discuss the matter and make observations and recommendations thereon.

INADEQUACY OF THE COMMITTEE'S TERMS OF REFERENCE

4. The scope of a Committee's deliberations is defined by the Order of Reference and must be confined within the limits so imposed. The four new legislative Select Committees were expressly not given the power to send for persons, papers and records, which power would allow for witnesses to be examined in public and minutes of evidence to be published subsequently. In addition Members understand

that the scope of the draft legislation on privilege and compellability which is on the Government's legislative programme for this session initially will only encompass those committees which already have the power to call for persons, papers and records. In the light of this development and the fact that many issues it might wish to pursue will be outside its remit, the Committee recommends that early consideration be given to extending the powers of this Committee to bring it within the ambit of the draft legislation.

5. Whilst the interpretation of a Committee's Order of Reference is a matter for the Committee itself, Members are conscious that they cannot seek to make any arrangements which would be ultra vires and that they cannot adopt arrangements which could be interpreted by the Dáil as expanding the Committee's powers, however restrictive they may interpret them to be. The fact that the Committee might not be acting within its terms of reference, might in certain circumstances have implications for privileges enjoyed by virtue of membership of the Dáil under the Constitution and membership of the Committee under the Committees of the Houses of the Oireachtas (Privilege and Procedure) Act, 1976. The Select Committee therefore agreed to continue its deliberations within the limits imposed by its Terms of reference and to report to the Dáil on any inadequacies in its powers encountered in the course of its investigations.

OVERLAP WITH OTHER OIREACHTAS COMMITTEES

6. Other Oireachtas Committees with greater powers of inquiry and to whom the draft legislation on compellability will apply could also in due course examine issues

arising from the matters investigated by the Inspector. The Committee of Public Accounts may examine issues such as the loss of revenue to the State or the cost of the Inspector's inquiry. The Joint Committee on Commercial State-sponsored Bodies, under its terms of reference, has the power to take evidence from Telecom Eireann in relation to its reports, accounts and overall operational results; and in the light of these reports to examine issues relating to board responsibility, structure and organisation, accountability and financing, together with the relationship with central Government and the Houses of the Oireachtas.

7. The Select Committee accepts that such matters of accountability relating to Telecom Eireann itself would more appropriately come within the ambit of the Joint Committee which has the power to hear evidence in public. The Select Committee's examination of the Glackin Report in no way precludes at a later date the initiation by the Joint Committee of an inquiry into Telecom Eireann's role in the events which led to the appointment of the Inspector.

ISSUES FOR CONSIDERATION

8. The narrow statutory remit of the inspector was limited to determining the membership of and the true persons who are, or have been, financially interested in the success or failure (real or apparent) of the aforementioned companies or able to control or materially to influence their policy. For this reason the Select Committee decided from the outset that its deliberations should not parallel the investigations already carried out by the Inspector but should address in a political fashion the deficiencies and inadequacies that have been exposed by the Report.

9. At its first meeting to consider this matter on 21 September the Committee decided that the following issues of public policy should be examined and recommendations made thereon:-

- inadequacy of state investigative procedures generally and the feasibility of Oireachtas Committees conducting public interest inquiries;
- efficacy of company law and how it should be amended;
- the necessity to make illegal certain activities at present intended as tax avoidance measures;
- accountability of Telecom Eireann;
- Freedom of Information Act.

WRITTEN SUBMISSIONS

10. Although the Committee lacks the power to call for persons, papers and records it does have the power to request written submissions and it was agreed that this would be the point of departure. The Chairman wrote to the Departments and bodies to whom the Report had been referred by the Minister for Enterprise and Employment for information on their investigations into the implications arising from the Inspector's conclusions. The replies received are reproduced in Appendix 3.
11. Some of these replies are peremptory and inadequate for the Committee's purpose and also contain points which would require to be teased out with the relevant officials. However, the Committee has no appropriate means for such scrutiny and it will be extremely difficult to proceed in its investigation of the issues without civil servants,

public servants and other individuals appearing before it to answer questions from Members.

12. Issues arising from responses received which prima facie would require further elucidation include the following:

(1) Revenue Commissioners

This response would appear to imply that the tax laws are adequate in any of the circumstances outlined by the Inspector, yet the Glackin Report itself indicates that the various transactions had successfully deferred a capital gains liability. The Committee would like to reconcile both of these conflicting documented views. There are other inconsistencies which the Committee would like clarified. For example, on the one hand the submission states that substantial progress has been made in the Revenue inquiry but later states that absence of agreement as to some basic facts may lead to delays and finally it concludes that in the light of the information which has emerged that Revenue is confident of a satisfactory outcome.

(2) Department of Justice

The committee would like to query the following terse dismissive statement -

"If it appears, after due consideration of the Glackin Report, that changes in the criminal law are needed in the light of that report, suitable provision will be made in the legislation proposed on fraud and dishonesty."

(3) Department of Enterprise and Employment

This Department states *inter alia* -

"The merits of using certain other provisions of the Companies Act, 1990 continue to be explored. For example section 19 of the Act empowers the Minister or an officer authorised by him to require the production by a company of books or documents, in various specified circumstances, including the suspicion of fraud or unlawful purpose. However, the use of such provisions might be limited by the availability of relevant resources within the Department and the question of the perceived impartiality of any investigation carried out by an officer of the Department."

The Committee cannot understand what is meant by the fact that resources might be unavailable in the Department to carry out a statutory function and also the "perceived impartiality" of a Departmental investigation.

(4) Central Bank

The Director of the Central Bank states they are only at liberty to disclose information when required by court proceedings or else in confidence to the Department of Finance. The Committee wonders what the position might be if the Department of Enterprise and Employment were carrying out an investigation under section 19 of the Companies Act, 1990 (see Appendix 5).

(5) Department of Transport, Energy and Communications

In his response the Secretary of this Department states that Mr. Glackin's reports exonerated Telecom Eireann directors and staff from any wrongdoing. The committee would view the matter in a different light insofar as the charge to be laid against Telecom is not one of fraud or criminal activity but rather managerial incompetence. The Committee is of the view that this issue requires further examination, including if necessary an inquiry by the Joint Committee on Commercial

State Sponsored Bodies.

PROCEDURAL OPTIONS

13. The Committee acknowledges that it cannot adopt any arrangements which could be interpreted by the Dáil as expanding its powers, however restrictive it may interpret them to be. Therefore it has sought to examine the possible procedural options open to it in order to fulfil the task assigned to it by the Dáil. These options include the holding of meetings in private session, attendance by Ministers, secondment of relevant officials to assist the Committee or the engagement of consultants.
14. Informal invitations to attend private meetings could issue to civil servants, public servants, other individuals or Ministers and has been done in the past by Oireachtas Committees. However, there is no certainty that such invitations would be accepted because of the committee's lack of power to call for persons or to compel attendance, uncertainty regarding the privilege of freedom of speech and immunity from suit for witnesses and in view of the contentious nature of the subject matter under review. In any event the Committee is of the view that meetings held in private would run counter to how a Parliamentary Committee should function in investigating issues of public concern.
15. There is also precedent for Ministers and indeed European Commissioners attending committee meetings in private where there was no power to call for persons. Ministers would have the protection of absolute privilege as defined in the 1976 Act

by virtue of their Dáil membership. Section 2(1) of the Act [see Appendix 5] states *inter alia* -

"A member of either House of the Oireachtas shall not, in respect of any utterance in or before a committee be amenable to any court"

However, the Committee feels that examination of Ministers only would not be the appropriate way to proceed to investigate a matter of public concern which has been referred to it by the Dáil.

16. The Committee is of the view that rather than engage consultants, it would be preferable firstly to exhaust the resources of the public service including Governments Departments and if feasible, the Office of the Comptroller and Auditor General. Therefore, the Chairman sought secondment for short periods of civil servants with the relevant expertise to the Select Committee for the duration of its examination of the Glackin Report to analyse issues and to assist in the formulation of observations and recommendations as is required under the Terms of Reference. The Committee accepts that it may emerge at a later date that independent legal advice is also necessary. The only positive response received at the date of adoption of this report has been from the Minister for Enterprise and Employment which is conditional upon the other relevant Departments also cooperating with the secondment of staff.

CONCLUSION

17. The Committee acknowledges that under its present terms of reference it can only conduct an examination of a very limited nature and that even if full cooperation and assistance were forthcoming from government Departments/agencies it would still be

confined to discussing public policy issues in broad terms. However, the Committee is willing to continue the task entrusted to it by the Dáil but this is dependent on acquiring the appropriate expertise.

18. The Committee wishes to acknowledge the effectiveness to date of the new committee system in its legislative function and in the examination of Estimates, but it must be remembered that by virtue of their terms of reference these committees also have a deliberative and scrutiny function. Without appropriate powers and resources the nascent select committee system could lose its relevancy in relation to this latter function, as has occurred to this Select Committee in its efforts to examine a report duly referred to it by the House.

Toddy O'Sullivan T.D.
Chairman.

20 October, 1993.

APPENDIX 1

SELECT COMMITTEE ON
ENTERPRISE AND ECONOMIC STRATEGY

Terms of Reference

(ORDER OF 7 APRIL, 1993)

- "1. That a Select Committee, which shall be called the Select Committee on Enterprise and Economic Strategy, be appointed consisting of 30 members of Dáil Éireann, in addition to the *ex officio* members of the Committee referred to in paragraph 3, to consider the following matters relating to agriculture, food, forestry, enterprise, employment, marine, transport, communications, energy, tourism and trade, namely-
- (i) the Estimates for Public Services relevant to the above-mentioned subjects,
 - (ii) the impact on equality of policy and legislation relevant to the above-mentioned subjects,
 - (iii) the Committee Stages of such Bills initiated in relation to those subjects as may be referred to the Select Committee under Standing Order 70 of the Standing Orders relative to Public Business,
 - (iv) such reports relevant to those subjects as Dáil Éireann may refer to the Select Committee for discussion, observations and recommendations,
- and shall report thereon to Dáil Éireann.
2. That the Select Committee shall have power to appoint sub-Committees and to delegate any matter comprehended by paragraph 1 to a sub-Committee.
3. That the member of the Government in charge of the Department the statute law in respect of which is dealt with in a Bill which is referred to the Select Committee or a sub-Committee thereof or the Estimates for Public Services for which are considered by the Select Committee or a sub-Committee thereof shall be an *ex officio* member of such Committee or sub-Committee but such member of the Government may nominate a Minister or Minister of State to be such *ex officio* member in his stead.
4. That the report of the Select Committee upon every Bill referred to it shall be set down for Report Stage in Dáil Éireann.

5. That the Select Committee shall make an annual report to Dáil Éireann which shall detail
 - (i) the work carried out by the Committee,
 - (ii) the work in progress by the Committee,
 - (iii) the attendance and voting records at meetings of the Committee,
 - (iv) its future work programme, and
 - (v) such other matters as the Committee deems appropriate.
6. That, subject to the consent of the Minister for Finance, the Select Committee shall have the power to engage the services of persons with specialist or technical knowledge to assist it or any of its sub-Committees in their consideration of any matters comprehended by paragraph 1.
7. That the Select Committee may invite submissions in writing, if considered necessary by the Committee, from interested persons or bodies on any matter comprehended by paragraph 1.
8. That, previous to the consideration of the Committee Stage of a Bill by the Select Committee, a briefing session or sessions shall be held between the officials of the relevant Department and members of the Select Committee (or sub-Committee as the case may be) and that such briefing session shall be held in private.
9. That, in the absence from a particular meeting of the Select Committee (or of a sub-Committee) of a member, another member of Dáil Éireann, nominated by the Party or Group within the meaning of Standing Order 89 to which the absent member belongs, may take part in the proceedings and vote in his stead.
10. That the Select Committee and each sub-Committee, previous to the commencement of business, shall elect one of its members to be Chairman, who shall have only one vote.
11. That all questions in the Select Committee and in each sub-Committee shall be determined by a majority of votes of the members present and voting and in the event of there being an equality of votes, the question shall be decided in the negative.
12. That every report which the Select Committee proposes to make shall, on adoption by the Select Committee, be laid before Dáil Éireann forthwith, together with any document relating thereto which the Select Committee proposes to publish, whereupon the Select Committee shall be empowered to print and publish such report and the said document, or documents, as the case may be.

13. That notwithstanding paragraph 12, where the Select Committee has completed Committee Stage of a Bill, it shall be empowered to print and publish the said Bill as amended, where appropriate.
14. That the quorum of the Select Committee shall be 11, and the quorum of each sub-Committee shall be a number to be decided by the sub-Committee when such sub-Committee is appointed.
15. That no document received by the Clerk to the Select Committee or a sub-Committee thereof shall be with held, withdrawn or altered without the knowledge and approval of the Committee or sub-Committee, as may be appropriate."

(ORDER OF 29 JUNE, 1993)

- "16. That Members of Dáil Éireann, not being members of the Select Committee, may attend meetings and take part in the proceedings of the Select Committee and of its sub-committees without having a right to vote."

APPENDIX 2

SELECT COMMITTEE ON ENTERPRISE
AND ECONOMIC STRATEGY

List of Members

Toddy O'Sullivan T.D. [Chairman]
Tommy Broughan T.D.
Richard Bruton T.D.
Raphael P. Burke T.D.
Hugh Byrne T.D.
Joe Costello T.D.
Mary Coughlan T.D.
Seymour Crawford T.D.
Michael Creed T.D. [Convenor]
Martin Cullen T.D.
Jimmy Deenihan T.D.
Sean Doherty T.D.
Alan Dukes T.D.
Brian Fitzgerald T.D.
Chris Flood T.D.
Johnny Fox T.D.
Sean Haughey T.D.
Seamus Hughes T.D.
Jim Kemmy T.D.
Tony Killeen T.D.
Seamus Kirk T.D.
Liam Lawlor T.D. [Convenor]
Padraic McCormack T.D.
Jim McDaid T.D.
Robert Molloy T.D.
Michael Noonan T.D. (Limerick East)
Ned O'Keeffe T.D.
Pat Rabbitte T.D.
Sean Ryan T.D.
P. J. Sheehan T.D.

APPENDIX 3

**COPIES OF CORRESPONDENCE RECEIVED FROM GOVERNMENT
DEPARTMENTS/AGENCIES**

THE INTERNATIONAL STOCK EXCHANGE OF THE UNITED KINGDOM AND THE REPUBLIC OF IRELAND LIMITED



THE IRISH STOCK EXCHANGE

28 ANGLESEA STREET
DUBLIN 2

Telephone: (353 1) 677 8808

Telex: (353 1) 93437

Fax: (353 1) 677 6045

LEONARD W. ABRAHAMSON
President

28 September, 1993

Mr Toddy O'Sullivan TD
Chairman
Select Committee on Enterprise & Economic Strategy
Dail Eireann
DUBLIN 2

Dear Deputy

I refer to your letter of September 21 concerning the Glackin report. We have already responded to the Minister for Enterprise & Employment on this matter. We received legal advice that Mr Glackin's report does not constitute legally dependable proof of his findings. As the Minister had also referred the report to the DPP we felt that we must await the outcome of any judicial process that the DPP might instigate. Any action by us in advance of this superior judicial process would, in our view, be inappropriate.

You asked if there were any legislative or other measures which might require to be put in place. We don't believe that the Report highlights the need for any such measures. The central problem is that if information is not forthcoming from another jurisdiction, our law cannot do anything about this. Even if the Government was able to negotiate an agreement about exchanging information with the authorities in the Channel Islands and the Isle of Man (and we believe this is highly unlikely), we feel that this would simply cause people to move their business to another country where their anonymity is guaranteed.

Yours sincerely

Leonard W. Abrahamson
President



ROINN DLÍ AGUS CIRT
(Department of Justice)
BAILE ÁTHA CLIATH
(Dublin)

4 October, 1993

Dear Chairman,

I refer to your letter of 21 September 1993 regarding the Glackin Report.

I am not in a position to say at this stage exactly what measures may be required following publication of this Report. Insofar as matters of fraud or dishonesty are concerned, the position, as you know, is that the Programme for a Partnership Government contains a commitment to 'revise and strengthen the law on serious fraud and on offences of dishonesty generally, in line with the recommendations of the Advisory Committee on Fraud and the Law Reform Commission'. Legislation will be prepared in this Department to give effect to that commitment. If it appears, after due consideration of the Glackin Report, that changes in the criminal law are needed in the light of that report, suitable provision will be made in the legislation proposed on fraud and dishonesty.

Yours sincerely,

SECRETARY

Toddy O'Sullivan Esq, T.D.,
Chairman
Select Committee on Enterprise and
Economic Strategy
Dail Eireann
Dublin 2

CENTRAL BANK OF IRELAND

BANC CEANNAIS NA hÉIREANN

PO Box No 559
Dame St., Dublin 2

Telephone (01) 671 6666
Telex 31041 Fax 671 6561

HEAD OFFICE
Dame St.

Our Ref.

Your Ref.

4 October 1993

Mr. Toddy O'Sullivan T.D.,
Chairman,
Select Committee on Enterprise
and Economic Strategy,
Dail Eireann,
DUBLIN 2

Re : Glackin Report

Dear Mr. O'Sullivan,

I refer to your letter of 21 September regarding the above report and I wish to take this opportunity to inform you about the nature of the Bank's involvement with Mr. Glackin's investigations from the outset.

Until 31 December, 1992, when the Exchange Control Acts lapsed, the Bank was responsible for the administration of Exchange Control regulations under delegated authority from the Minister for Finance. During the course of Mr. Glackin's investigations, the Bank was requested by the Department of Finance to examine its Exchange Control records for information on certain transactions. The Bank conducted a full examination and conveyed the results to the Department of Finance. Following publication of the final Glackin report, the Department of Finance requested the Bank to examine further its records and comment on the Exchange Control aspects of the transactions described by the Inspector. The Bank has already forwarded its response to the latest request from the Department.

Contd/....

**CENTRAL BANK
OF IRELAND**

Continuation Sheet

I would like to point out that the Bank is bound by stringent legal constraints on divulging information about transactions involving individual persons or companies. Other than where required by court proceedings, or where we were responding in confidence to the Department of Finance as our principal, we are not at liberty to release or discuss the information contained in our Exchange Control records.

In these circumstances, the Bank has no option but to decline to respond directly to the request in your letter. Furthermore, with regard to any legislative or other measures that might arise in this context, the Bank would also see this as an issue for the Department of Finance especially since at this stage the Exchange Controls have all been phased out.

I trust that you will appreciate the nature of my reply, which does not in any way suggest that the Bank does not wish to be helpful to the work of your Committee. Rather its desire is to be as helpful as possible. We have been doing this since the start of the investigations through the Department of Finance as this has been and continues to be the only legal route open to us.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Maurice F. Doyle', with a stylized flourish at the end.

Maurice F. Doyle
GOVERNOR



OIFIG na gCOIMISINEIRÍ IONCAIM
(Office of the Revenue Commissioners)

CAISLEÁN BHAILE ÁTHA CLIATH
(Dublin Castle),

BAILE ÁTHA CLIATH 2
(Dublin 2).

5 October, 1993.

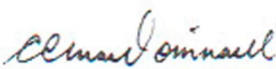
Mr. Toddy O'Sullivan, T.D.,
Chairman,
Select Committee on Enterprise
and Economic Strategy,
Leinster House,
Dublin, 2.

Dear Deputy O'Sullivan,

I refer to your letter of 21 September in which you request a memorandum from this Office on the outcome of Revenue's investigations in relation to the 'Glackin Report'.

You will be aware that this Office conducted an investigation into the transactions in question on the instructions of the Minister for Finance. In the circumstances, I consider that any comments by this Office should be made to the Minister. Accordingly, I propose to channel my reply to your request through the Department of Finance.

Yours sincerely,


C. C. MacDomhnaill,
Chairman.

An Roinn Fiontar agus Fostaíochta
Áras Firdorcha
Ionad Setanta
Sráid Firdorcha Theas
Baile Átha Cliath 2



Department of Enterprise and Employment
Frederick Building
Setanta Centre
South Frederick Street
Dublin 2

Tel: (01) 661 4444 Ext.

Fax: (01) 679 5710

Telex: 93478

Ref. No.

5 October 1993

Ms Aileen McHugh
Clerk to the Select Committee on Enterprise
and Economic Strategy
Kildare House
Dublin 2

Re: Glackin Report

Dear Aileen

Please find attached a note for the information of the
Committee, as requested in the Chairman's letter of 21 September
1993 to the Secretary.

Yours Sincerely

A handwritten signature in blue ink, appearing to read 'Seamus Doherty', is written over the typed name.
Seamus Doherty
Company Law Administration

Department of Enterprise and Employment

Information Note to the
Select Committee on Enterprise and Economic Strategy
regarding the "Glackin Report"

Commencement of company law inquiry

1. The then Minister for Industry and Commerce referred in the Dail to the circumstances leading to the commencement of the "Glackin Inquiry" in October 1991. In his reply to Question number 25 on 14 November 1991 (copy attached), the Minister adverted to the difficulties experienced by the inquiry under the aegis of the then Minister for Tourism, Transport and Communications (the "McDonagh inquiry"). The report of that inquiry recommended that an inquiry under company law be instituted and this recommendation was accepted and advanced in the appointment of John A. Glackin, Solicitor.

Report of Inquiry

2. Mr Glackin's inquiry also experienced considerable difficulties. These have been well documented. However, his final report has now been published and has been urgently made available by the Minister to various authorities with relevant responsibilities - the Director of Public Prosecutions, the Revenue Commissioners, the Minister for Transport, Energy and Communications, the Irish Stock Exchange and the Minister for Finance. The Minister has officially recorded his gratitude to the UK Secretary of State for Trade and Industry for the helpful co-operation extended through the capabilities of the UK code of company law. The inspector adverts to the usefulness of this official assistance in his final report. The Department

of Enterprise & Employment has been giving careful consideration to the report and the experience gleaned from the inquiry as to whether changes or improvements are necessary in the regulatory and legislative regime relating to the conduct of such inquiries and the code of company law.

Section 16 Direction

3. On foot of the inspector's interim report in July 1992, the then Minister for Industry and Commerce issued a direction to United Property Holdings Ltd, under section 16 of the Companies Act, 1990, in relation to certain shares held by Aurum Nominees Ltd. The effect of the direction is to freeze all rights in relation to the shares, including any transfer rights, voting rights and the receipt of any dividend from them. The inspector had not received the necessary co-operation from Mr Joe Lewis, a resident of the Bahamas and the claimed beneficial owner of the shares in question. It emerges from the final report that Mr Lewis held his shares in UPH Ltd as a nominee in trust for Mr J P McManus. This statutory restriction continues in force and will be reviewed, in the light of the provisions of the Companies Acts, 1963 to 1990, as the need arises.

Legislative Aspects

4. During the course of the investigation undertaken by Mr Glackin, a number of issues relating to the provisions of Part II of the Companies Act, 1990 (under which Mr Glackin's inquiry was undertaken) were the subject of court proceedings. In general, the powers and procedures in the

Act were upheld and proved satisfactory. While part of section 10(5) was deemed to be unconstitutional, the courts held that the impugned part was capable of severance from the subsection and that the remainder was operable, in conjunction with subsection 10(6).

Conduct of Investigations

5. The courts were fully supportive of the inspector in the face of much legal challenge. The Minister has publicly expressed his belief that this inquiry was justified by the public interest which was well served for the public expenditure involved. The Secretary of the former Department of Industry and Commerce, in his capacity as Accounting Officer, also dealt with questions at the Public Accounts Committee on costs aspects and the appointment of the inspector, on 1 July 1993. Consideration is being given, with regard to the conduct of future company law inquiries, as to how best to further minimise the costs of such investigations. The merits of using certain other provisions of the Companies Act, 1990, continue to be explored. For example, section 19 of the Act empowers the Minister or an officer authorised by him to require the production by a company of books or documents, in various specified circumstances, including the suspicion of fraud or unlawful purpose. However, the use of such provisions might be limited by the availability of relevant resources within the Department and the question of the perceived impartiality of any investigation carried out by an officer of the Department.

Garda Investigation instituted by the DPP

6. Every co-operation has been provided to facilitate the criminal investigations being carried out by the Gardai at the request of the DPP. The Minister would assure the Deputies that this co-operation will continue to be provided as the need arises.

5 October 1993

Telecom Éireann Investigation.

25. Mr. Rabbitte asked the Minister for Industry and Commerce if he will outline, in relation to his appointment of an inspector to investigate the companies involved in the Telecom Éireann Ballsbridge site deal, the reason the appointment was made under section 14 rather than section 8 of the Companies Act, 1990 which would have allowed the inspector to have access to the bank accounts of the companies involved; if he intends to seek any additional powers for the inspector; his views on whether it may be necessary to amend the Companies Act, 1990; and if he will make a statement on the matter.

Minister for Industry and Commerce (Mr. O'Malley): The Minister for Tourism, Transport and Communications at Question Time on 5 November 1991 informed the House of certain difficulties faced by the inquiry he had established on 14 September 1991, and the consequent recommendation in the report of that inquiry that an inspector be appointed under the Companies Act, 1990. Arising from consultations I had with the Minister for Tourism, Transport and Communications I proceeded to appoint an inspector under section 14 of the Companies Act, 1990 to investigate and report on the membership of Chestvale Properties Ltd. and Hoddle Investments Ltd. and otherwise with respect to these companies for the purposes of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of these companies or able to control or materially to influence their policy.

Section 8 of the Companies Act, 1990, provides that the High Court may appoint inspectors, on my application, to investigate the affairs of a company if it is satisfied that any one of a number of events have arisen as specified in the section. In this regard, I was satisfied that the known facts pertaining to this case did not extend to the circumstances set out in section 8.

It was in the light of the foregoing and the fact that the main concern was to establish, in the public interest, the true ownership of these companies that I decided to proceed with an investigation under section 14. The inspector has substantial powers under the 1990 Act. He is in regular communications with my Department. His work is proceeding well. Should any difficulties arise for the inspector, these can be addressed. On receipt of his report I will consider what further action might be required.

I would like to assure the Deputy that company law is kept under review, and if I feel it needs to be changed, I will not hesitate to propose this.



ROINN AIRGEADAIS
(DEPARTMENT OF FINANCE)
BAILE ÁTHA CLIATH 2.
(DUBLIN 2)

6 October 1993

Mr Toddy O'Sullivan TD
Chairman
Select Committee on Enterprise & Economic
Strategy
Dail Eireann

Dear Chairman

I refer to your letter of 21 September 1993 requesting this Department to furnish for the information of the Select Committee a memorandum on matters arising out of the Glackin report.

The matters arising out of the report of direct relevance to this Department and to bodies under the aegis of the Minister for Finance relate to exchange control and tax aspects.

Mr Glackin's report was referred to the Central Bank for its comments on the exchange control aspects of the transactions described in it. The Bank has recently forwarded its response and this is being considered by the Department.

The reply of the Chairman of the Revenue Commissioners to your request is enclosed herewith.

In March 1992 the Minister for Finance announced guidelines indicating the principles which should govern relationships between Departments of State and State bodies under their aegis. I enclose a copy for the information of the Select Committee together with the Minister's press release.

The guidelines are based on recommendations in a report which I prepared at the request of the Taoiseach, Mr Albert Reynolds TD, when he was Minister for Finance. A copy of this report is also attached.

Yours sincerely

Seán Cromien

Sean Cromien
Secretary

Glackin Enquiry into the Telecom Affair

Request to Revenue Commissioners for a Report on the Taxation Aspects

GENERAL POINTS

1. A Revenue enquiry into the taxation aspects commenced in May 1990 following the contract for disposal of the site in question to Telecom. The nature of this enquiry changed in September 1991 on the establishment (by the then Minister for Tourism, Transport and Communications) of a formal enquiry into the relevant transactions. The report of that enquiry and the subsequent interim and final reports of Mr. Glackin have been of considerable assistance to the Revenue enquiry.

Substantial progress has been made in the Revenue enquiry but it is not yet complete. Because of its scope and the number of complex issues to be resolved, it may not be possible to reach finality on all Revenue aspects for some time. The absence of agreement as to some basic facts may be expected to lead to delay in the resolution of related taxation points.

2. The Revenue response to the Select Committee's request is necessarily in general terms. There is the consideration that release of information could undermine the further progress of Revenue enquiries. It could also of course lead to public debate as to the merits of particular arguments and to speculation as to the tax position of all persons mentioned as being involved in any way in the affair.

For these reasons, and also because of normal confidentiality obligations, it is not considered appropriate to comment in detail on the possible tax implications for the individuals and companies known to be involved.

3. The extent, if any, to which the recent Amnesty legislation - the Waiver of Certain Tax, Interest and Penalties Act, 1993 - may be applicable to the persons involved in the Telecom affair is unclear.

This legislation provides, subject to various conditions, two kinds of Amnesty in relation to pre-April 1991 liabilities -

- a 15% Incentive Amnesty covering certain Income Tax and Capital Gains Tax liabilities of individuals, and

- a General Amnesty providing for all taxpayers (including companies) a waiver of interest and penalties.

It should be noted, however, that under the terms of the legislation

- companies as distinct from individuals are not within the scope of the special 15% amnesty
- individuals who had been notified before 25 May, 1993 that they were under investigation or that the inspector intended to make any enquiries are excluded from the scope of the special 15% amnesty and
- any sum which was not paid on or before 25 May, 1993 by virtue of a tax avoidance scheme is also excluded from the 15% amnesty.

The General Amnesty is not subject to the same range of restrictions but the full tax must be paid under it.

4. All taxation aspects of the Telecom affair have been monitored by the Anti-Avoidance Unit of the Chief Inspector of Taxes' Branch of the Revenue. This Unit was strengthened in 1991 in accordance with that Branch's Corporate Plan (the FORWARD PLAN) of December 1990. It has been effective in countering attempted avoidance and all information (including the GLACKIN reports) which has come to hand regarding the Telecom affair has been processed by the Unit.

As part of the FORWARD PLAN, specific Audit Districts have also been set up; these operate in conjunction with the Anti-Avoidance Unit with a view to early detection of apparent avoidance schemes and the taking of appropriate counter-measures.

5. While one cannot, of course, be certain as to the motives behind particular transactions, their structures and methodology, one may presume that minimisation of tax was a primary objective. However, while all necessary information is not yet available, Revenue, in the light of the information which has emerged, are now confident of a satisfactory outcome to the taxation enquiries. A significant sum of tax has already been paid to Revenue in the course of enquiries to date.

6. Notes on specific legal points which may be relevant to Revenue's enquiries are attached.

7. The question of whether any new legislative measures may be required will of course be considered in the light of the outcome of the enquiries.

Notes on Specific Legal Aspects of the Revenue enquiry into the Telecom Affair

1) The Revenue enquiry involves a detailed examination of the accounts and tax returns of all possible relevant companies and individuals with a view to establishing the tax liabilities, including Corporation Tax, Income Tax, Capital Gains Tax and Stamp Duty.

2) Areas of possible significance in tax legislation include the following:

i) In general, a person wherever resident is liable to Capital Gains Tax on the gain accruing on the disposal of land in the State (other than trading stock). [Sections 3 and 4, Capital Gains Tax Act 1975].

ii) Under the provisions of paragraph 4, Schedule 2, Capital Gains Tax Act 1975, where a person is issued with shares or debentures by a company in exchange for shares or debentures in another company, no disposal of those latter securities is deemed to have taken place. Essentially, the legislation views the exchange as a "paper for paper" transaction. Liability to Capital Gains Tax is deferred until actual money is received.

It should be noted, however, that under the provisions of Section 63, Finance Act 1982, such an exchange of paper does not give rise to a deferral of liability unless it is shown that the exchange was effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose, or one of the main purposes, was avoidance of liability to tax.

iii) Under the provisions of Section 36, Capital Gains Tax Act 1975, Irish resident beneficial owners of shares in a non-resident company may be liable to Capital Gains Tax on gains accruing to that non-resident company. In other words, the section can treat the gains of the non-resident company as if they arose to the Irish-resident shareholders of the company.

- iv) Under the provisions of Section 37, Capital Gains Tax Act 1975, gains arising to the trustees of a non-resident settlement (including a trust) may in certain circumstances be treated as arising to persons who have an interest in the property of the settlement. In other words, tax cannot be avoided by arranging matters so that a gain arises to a trust whose trustees are not Irish resident but the settlor and the beneficiaries of the trust are resident in Ireland.
 - v) Under the provisions of Paragraph 11, Schedule 4, Capital Gains Tax Act 1975, a purchaser of certain property in the State (including development land) must deduct 15% of the consideration and pay it over to Revenue unless the vendor produces a certificate which allows payment in full. This certificate is obtainable only if the Revenue position regarding the disposal is protected.
 - vi) Under the provisions of Section 57, Finance Act 1974, an Irish resident individual is liable to tax on certain income arising abroad which arises from or is associated with a transfer of assets abroad. An individual cannot avoid tax simply by transferring funds "offshore".
 - vii) The Ireland/Cyprus Double Taxation Agreement of 1970 governs the taxation of property situated in either State and income originating in either State to the benefit of residents of the other State.
- 3) For the purposes of its enquiries, Revenue has recourse to the various powers contained in the relevant tax legislation. However, it must be borne in mind that, in the case of non-resident taxpayers, there are territorial constraints on the use of its powers.



AN ROINN IOMPAIR FUINNIMH AGUS CUMARSÁIDE
(Department of Transport, Energy and Communications)
BAILE ÁTHA CLIATH 2.
(Dublin 2.)

6 October, 1993

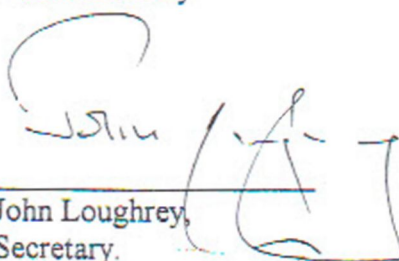
Mr. Toddy O'Sullivan, T.D.
Chairman
Select Committee on Enterprise and
Economic Strategy
Dail Eireann
Dublin 2

Dear Chairman,

I refer to your letter of 21 September, 1993 in which you requested that I provide a memorandum for the information of the Select Committee on the outcome of this Department's investigation into the report by Mr. John Glackin on the events leading to the purchase, by Telecom Eireann, of the Johnston, Mooney and O'Brien site in Ballsbridge.

I am pleased to enclose a memorandum as requested, which has been seen by my Minister.

Yours sincerely



John Loughrey,
Secretary.

SELECT COMMITTEE ON ENTERPRISE AND ECONOMIC STRATEGY

GLACKIN REPORT ON TELECOM EIREANN SITE AT BALLSBRIDGE

MEMORANDUM ON THE OUTCOME OF THE INVESTIGATION OF THE DEPARTMENT OF TRANSPORT, ENERGY AND COMMUNICATIONS INTO THE GLACKIN REPORT.

The Committee will be aware that the then Minister for Tourism, Transport and Communications established, on 19 September, 1991, a formal enquiry into the events leading to the purchase, on 29 June, 1990 by Telecom Eireann of the Johnston, Mooney and O'Brien site in Ballsbridge.

Arising from a lack of co-operation from certain individuals the report of this investigation recommended that an alternative course of action be taken under the Companies Acts. This led to John A. Glackin being appointed as Inspector by the then Minister for Industry and Commerce to investigate the matter under the Companies Acts.

Mr. Glackin's reports exonerated Telecom Eireann directors and staff from any wrongdoing in the transaction.

It would be wrong, of course to take from that that there were not lessons to be learned both by Telecom Eireann, the Minister and the Department from the events.

On 30 September, 1991 the then Minister wrote to the Acting Chairman of Telecom Eireann on the need to ensure that the highest standards of personal integrity throughout the Public Sector were maintained. The Minister, in reviewing existing procedures, sought details of procedures in place to ensure that Telecom Eireann Board Members and senior executives are obliged to make clear declarations of any possible conflict of interest that might arise in any situation. The Minister also sought details of any benefits in cash or in kind received by Board Members and or senior executives arising from their positions with the Company. The Minister also wrote in similar vein to the Chairmen of all State bodies under his responsibility.

In its response Telecom Eireann submitted a draft "Note on ethical standards for Guidance of Telecom Eireann Board Members and Senior Executives" which was being examined by the Company's legal advisors.

The Committee will be aware that the Department of Finance published "Guidelines for State Bodies" in March, 1992. These were amended and strengthened by the then Department of Tourism, Transport and Communications and issued by the Minister on 27 March, 1992 to the Chairman of Telecom Eireann. He acknowledged receipt on 28 April, 1992 and advised that the Company was currently reviewing what changes would be necessary to ensure compliance with the guidelines. The Chairman of Telecom Eireann is required to submit a special report, when formally submitting the annual reports and accounts of the Company, confirming that the guidelines are being complied with.

In June, 1992 Telecom Eireann commissioned independent consultants, inter alia, to review the arrangements within Telecom Eireann and its subsidiaries for complying with and implementing the guidelines. The consultants reported to the Company on 25 June, 1992 and again on 24 March, 1993. In their first report the consultants indicated that long standing practices and recent innovations (in Telecom Eireann) have anticipated many of the requirements of the Guidelines. The two reports, are confidential to the Company.

In summation the Department believes that both Telecom Eireann and the Department have shown by their actions since September, 1991, that the lessons to be learned from the purchase of the Johnston, Mooney and O'Brien premises in Ballsbridge have been taken on board. The Department considers that for it to involve itself to a greater degree in what are essentially day to day matters for the Company would restrict Telecom Eireann's freedom to operate in a commercial manner as required under statute.

APPENDIX 4

[1990.]

Companies Act, 1990.

[No. 33.]

Appointment and
powers of inspectors
to investigate
ownership of
company.

14.—(1) The Minister may, subject to *subsection (2)*, appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company. 40

(2) An appointment may be made by the Minister if he is of the opinion that there are circumstances suggesting that it is necessary—

- (a) for the effective administration of the law relating to companies; 45
- (b) for the effective discharge by the Minister of his functions under any enactment; or
- (c) in the public interest.

5 (3) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

10 (4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

15 (5) For the purposes of any investigation under this section, *sections 9 to 11, except section 10 (3)*, shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that—

20 (a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others and 25 to any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; 30

35 (b) if the Minister is of opinion that there is good reason for not divulging any part of a report made by virtue of this section he may disclose the report with the omission of that part; and may cause to be kept by the registrar of companies a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report; and

APPENDIX 5

[1990.]

Companies Act, 1990.

[No. 33.]

Power of Minister
to require
production of
documents.

19.—(1) The Minister may, subject to subsection (2), give directions to any body being—

- (a) a company formed and registered under the Companies Acts;
- (b) an existing company within the meaning of those Acts;
- (c) a company to which the Principal Act applies by virtue of section 325 thereof or which is registered under that Act by virtue of Part IX thereof;
- (d) a body corporate incorporated in, and having a principal place of business in, the State, being a body to which any of the provisions of the said Act with respect to prospectuses and allotments apply by virtue of section 377 of that Act;
- (e) a body corporate incorporated outside the State which is carrying on business in the State or has at any time carried on business therein;
- (f) any other body, whether incorporated or not, which is, or appears to the Minister to be, an insurance undertaking to which the Insurance Acts, 1909 to 1990, or regulations on insurance made under the European Communities Act, 1972, would apply,

requiring the body, at such time and place as may be specified in the directions, to produce such books or documents as may be so specified, or may at any time, if he thinks there is good reason so to do, authorise any officer of his, on producing (if required so to do) evidence of his authority, to require any such body as aforesaid to produce to him forthwith any books or documents which the officer may specify.

(2) Directions may be given by the Minister if he is of the opinion that there are circumstances suggesting that—

- (a) it is necessary to examine the books and documents of the body with a view to determining whether an inspector should be appointed to conduct an investigation of the body under the Companies Acts; or
- (b) that the affairs of the body are being or have been conducted with intent to defraud—
 - (i) its creditors,
 - (ii) the creditors of any other person, or
 - (iii) its members; or

- (c) that the affairs of the body are being or have been conducted for a fraudulent purpose other than described in *paragraph (b)*; or
- (d) that the affairs of the body are being or have been conducted in a manner which is unfairly prejudicial to some part of its members; or
- (e) that any actual or proposed act or omission or series of acts or omissions of the body or on behalf of the body are or would be unfairly prejudicial to some part of its members; or
- (f) that any actual or proposed act or omission or series of acts or omissions of the body or on behalf of the body are or are likely to be unlawful; or
- (g) that the body was formed for any fraudulent purpose; or
- (h) that the body was formed for any unlawful purpose.

(3) Where by virtue of *subsection (1)* the Minister or an officer authorised by the Minister has power to require the production of any books or documents from any body, the Minister or officer shall have the like power to require production of those books or documents from any person who appears to the Minister or officer to be in possession of them; but where any such person claims a lien on books or documents produced by him, the production shall be without prejudice to the lien.

(4) Any power conferred by or by virtue of this section to require a body or other person to produce books or documents shall include power—

- (a) if the books or documents are produced—
 - (i) to take copies of them or extracts from them; and
 - (ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, the body in question, to provide an explanation of any of them;
- (b) if the books or documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) If a requirement to produce books or documents or provide an explanation or make a statement which is imposed by virtue of this section is not complied with, the body or other person on whom the requirement was so imposed shall be guilty of an offence; but where a person is charged with an offence under this subsection in respect of a requirement to produce any books or documents, it shall be a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(7) Nothing in this section shall prevent the Minister from authorising a person other than an officer of his to exercise the functions which an officer of his may exercise under this section and, where the

APPENDIX 6

[1976.] *Committees of the Houses of the* [No. 10.]
Oireachtas (Privilege and Procedure) Act, 1976.

Number 10 of 1976

COMMITTEES OF THE HOUSES OF THE OIREACHTAS
 (PRIVILEGE AND PROCEDURE) ACT, 1976*

AN ACT TO MAKE PROVISION REGARDING PRIVILEGE,
 IMMUNITY AND PROCEDURE IN RELATION TO COM-
 MITTEES OF THE HOUSES OF THE OIREACHTAS.

[6th April, 1976]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “a committee” means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas. Definition.

2.—(1) A member of either House of the Oireachtas shall not, in respect of any utterance in or before a committee, be amenable to any court or any authority other than the House or the Houses of the Oireachtas by which the committee was appointed. Privilege and immunity of committees.

(2) (a) The documents of a committee and the documents of its members connected with the committee or its functions,

(b) all official reports and publications of a committee, and

(c) the utterances in a committee of the members, advisers, officials and agents of the committee,

wherever published shall be privileged.

3.—This Act may be cited as the Committees of the Houses of the Oireachtas (Privilege and Procedure) Act, 1976. Short title.

SELECT COMMITTEE ON ENTERPRISE AND ECONOMIC STRATEGY

Proceedings of the Committee

Wednesday 20 October, 1993.

1. The fourth meeting of the Committee to consider the Glackin Report took place in private at 4pm in the Room G2, Kildare House.

2. The following Members were present:-

Deputies Toddy O'Sullivan (in the Chair), Tommy Broughan, Mary Coughlan, Michael Creed, Sean Doherty, Brian Fitzgerald, Sean Haughey, Seamus Hughes, Tony Killeen, Liam Lawlor, Padraic McCormack, Robert Molloy, Michael Noonan (Limerick East) and Sean Ryan.

The following substitutes were present in accordance with paragraph 9 of the Order of Reference of 7 April 1993:-

Willie Penrose (for Joe Costello), Michael Finucane (for Richard Bruton), Dessie O'Malley (for Martin Cullen), P.J. Morley (for Chris Flood)

3. DRAFT INTERIM REPORT

The Chairman brought forward a draft Interim Report, which was read as follows:-

- (i) Paragraphs 1 to 3, inclusive, *agreed to*.

- (ii) Paragraph 4

Paragraph read as follows:-

- "4. The scope of a Committee's deliberations is defined by the Order of Reference and must be confined within the limits so imposed. The four new legislative Select Committees were expressly not given the power to send for persons, papers and records, which power would allow for witnesses to be examined in public and minutes of evidence to be published subsequently. In addition Members understand that the scope of the draft legislation on privilege and compellability which is on the Government's legislative programme for this session will not encompass the new committees."

Amendment proposed (Deputies Noonan, Lawlor and Fitzgerald)

To delete all words after "session" and substitute the following :-
 "initially will only encompass those committees which already have the power to call for persons, papers and records. In the light of this development and the fact that any issues it might wish to pursue will be outside its remit, the Committee recommends that early consideration be given to extending the powers of this Committee to bring it within the ambit of the draft legislation."

Amendment agreed to.

Paragraph, as amended, agreed to.

(iii) Paragraphs 5 to 14, inclusive, agreed to.

(iv) Paragraph 15

Paragraph read as follows:-

"15. There is also precedent for Ministers and indeed European Commissioners attending committee meetings in private where there was no power to call for persons. Ministers would have the protection of absolute privilege as defined in the 1976 Act by virtue of their Dail membership. Section 2(1) of the Act [see Appendix 5] states inter alia -
 'A member of either House of the Oireachtas shall not, in respect of any utterance in or before a committee be amenable to any court'
 However, the Committee feels that examination of Ministers would not be the appropriate way to proceed to investigate a matter of public concern which has been referred to it by the Dail."

Amendment proposed (Deputies O'Malley and Noonan)

After "examination of Ministers" to insert "only".

Amendment agreed to.

Paragraph, as amended, agreed to .

(v) Paragraphs 16 to 18, inclusive, agreed to.

(vi) Appendices 1 to 6, agreed to.

(vii) Draft Interim Report, as amended, agreed to.

Ordered: To report accordingly.

5. ADJOURNMENT

The committee adjourned at 4.15pm

Toddy O'Sullivan, T.D.
Chairman.
October, 1993.